



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,821	10/18/2001	Paul Kostyniak	19226/2091 (R-5629)	8272

7590 10/31/2003

Michael L. Goldman  
NIXON PEABODY LLP  
Clinton Square  
P.O. Box 31051  
Rochester, NY 14603

EXAMINER
----------

LEVY, NEIL S

ART UNIT	PAPER NUMBER
----------	--------------

1616

DATE MAILED: 10/31/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
--------------------	-------------	-----------------------	---------------------

EXAMINER
----------

ART UNIT	PAPER NUMBER
----------	--------------

DATE MAILED:

10

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

OFFICE ACTION SUMMARY

☒ Responsive to communication(s) filed on 8/18/03

☐ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) \_\_\_\_\_ is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☒ Claim(s) 22-26, 28-32 is/are rejected.

☒ Claim(s) 27 is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

BEST AVAILABLE COPY

Art Unit: 1616

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

The anticipation rejection of the MATOME master's thesis is withdrawn, in view of applicant's arguments that the current inventors conceived the invention, and directed Matome's work. The species requirement for ligands is withdrawn.

Claims 22-26, 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over Beldock et al 534692 2 and Guilbeaux 492644.

Beldock (rejection of record) presents toxicity of topically applied insect repellents, DEET, in ~~lot~~ lotion; spray forms, creams, but did not use clays or ligands.

Guilbeaux provides topically, the instant charged smectite clay having exchange capacity, hydrophobic domains and attached quaternary ammonium Ligand (col. 2, line 44-line 3, col. 3) at amounts up to 150% of the cation exchange capacity (col. 8, lines 18-31), further, blends of ligands are provided (col. 8, lines 39-61). The topical composition generally includes cosmetic formulations, insect repellents (col. 9, line 25) and provides reduced infection potential (col. 1, 2).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize Topical Compositions to use one of Beldock, modified with Guilbeaux to provide acceptable application with any insect repellent. Guilbeaux teaches one having ordinary skill in the art would be motivated to perform this modification in order to ~~soften~~ soften topical products.

Art Unit: 1616

Applicant's arguments filed on 8/18/03 have been fully considered but they are *globally* not persuasive. Applicant's arguments are persuasive, but the concept is known, as claimed: "applying topically" and represented by Guilbeaux.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday through Friday 7 AM to 5:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy/LR  
October 28, 2003



NEIL S. LEVY  
PRIMARY EXAMINER